IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1041 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTILAL J PATEL

Versus

DIVISIONAL CONTROLLER

Appearance:

MR PRABHAKAR UPADHYAY for MR MUKESH H RATHOD for Petitioner

MR HARDIK C RAWAL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/01/2001

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The petitioner was dismissed from the services of the Corporation under the order of the Disciplinary Authority on the ground of his committing a grave and serious

misconduct of not issuing tickets to the passengers though taken the money from them. The first appeal filed against this order was rejected by the appellate authority. However, in the second appeal, this punishment of dismissal was substituted by a lesser punishment, meaning thereby, of bringing down the pay of the petitioner to the minimum of the pay scale of the post and he was not given the backwages for the period during which he remained under dismissal. The petitioner thereafter approached to the Industrial Tribunal, Surat and under the award dated 28th December, 1989, no relief has been granted. Hence, this special civil application.

#. All the four authorities i.e. the Disciplinary Authority, First Appellate Authority, Second Appellate Authority and Industrial Tribunal, Surat held concurrently that the petitioner is guilty of misconduct, which is alleged against him. Looking to the grave and serious misconduct which the petitioner committed i.e. misappropriation of the Corporation's money, the second appellate authority has shown unwarranted leniency. This view which has been taken by the second appellate authority is detrimental to the interest of the Corporation. If such persons are taken back in service to afford them an opportunity to improve, it will result in more corruption and misappropriation of the Corporation's property. However, that order has not been challenged by the Corporation. The Industrial Tribunal, Surat is perfectly legal and justified in its approach not to interfere in the matter. The statement of the petitioner recorded at site is produced before the Tribunal at Ex.8 in which he stated that he does not remember whether the amount of fare has been given to him by the passengers or not. Learned Tribunal is perfectly legal and justified to hold that this delinquent employee has not made such clear reference in his statement that the said passenger has not given the amount of fare to him. The passengers travelled from Ahmedabad to Vadodara and distance in between these two places is of 100 kms. When the bus started from Ahmedabad, 68 passengers were there but at the time of checking of the bus, in all, only 30 passengers were there. The petitioner had more than sufficient time available with him, if he was really a bonafide person and intended to issue tickets to the passengers, to do the needful, but this has not been done. So this plea taken that the vehicle was overcrowded, is relevant in this matter. It is a clear case of misappropriation of Corporation's money by the petitioner. The Tribunal has also recorded a finding of fact that he took Rs.6-30ps. from the passenger. In the facts of this case, no interference in the matter is

called for in the award of the Industrial Tribunal, Surat in Reference ITS No.23/87.

#. In the result, this petition fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. The petitioner is directed to pay Rs.1000/= as costs of this petition to the Corporation.

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zgs/-